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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

CYNTHIA L. CZUCHAJ, individually  
and on behalf of all others similarly  
situated, et al.,  
Plaintiffs,

vs.

CONAIR CORPORATION, a Delaware  
corporation,  
Defendant.

Case No.: 13-cv-1901-BEN (RBB)

**ORDER DENYING DEFENDANT'S  
MOTION FOR LEAVE TO FILE  
SUR-REPLY**

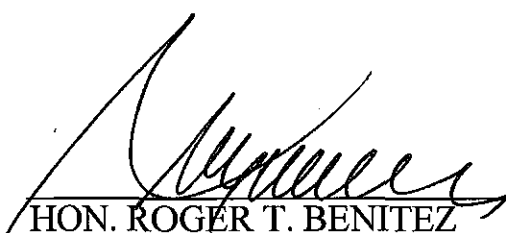
Before this Court is an *Ex Parte* Motion for Leave to File Sur-Reply, filed by Defendant Conair Corporation. (Docket No. 215.) Defendant contends that Plaintiffs raised new arguments and evidence in their reply brief in support of their motion for approval of class notice plan. Plaintiffs filed an opposition. (Docket No. 217.)

"[W]here new evidence is presented in a reply to a motion . . . , the district court should not consider the new evidence without giving the non-movant an opportunity to respond." *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996). The Court has discretion to either allow a party to file a sur-reply or disregard the new evidence. *See Johnson v. Wennes*, No. 08cv1798, 2009 WL 1161620, at \*2 (S.D. Cal. Apr. 28, 2009); *Lewis v. Gother Ins. Co.*, No. 09cv252, 2009 WL 3698028, at \*1 (S.D. Cal. Nov. 5,

2009). Defendant's Motion is **DENIED**. The Court will disregard any new evidence raised in the reply brief.

**IT IS SO ORDERED.**

Dated: March 10, 2016

  
HON. ROGER T. BENITEZ  
United States District Judge